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IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, PETITIONER

v.

JOHN VON NEUMANN,

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS NINTH CIRCUIT

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QUESTION PRESENTED

Did the Court of Appeals correctly rule that the balancing factors set forth in United States v. Eight Thousand Eight Hundred Fifty Dollars ($8,850) in United States Currency, 461 U.S. 555 (1983), should be applied in petitions for remission or mitigation arising from seizure of an automobile?

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS

To the Honorable, the Chief Justice, and Associate Justices of the Supreme Court of the United States:

Respondent, John Von Neumann, prays that this court deny the petition for writ of certiorari filed by petitioner to seek review of the judgment of the United States Court of Appeals, Ninth Circuit, dated March 30, 1984.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 729 F.2d 657, and is set forth in Appendix "A" hereto, infra, p. A-1. The previous opinion of the Court of Appeals is reported at 660 F.2d 1319 (except for certain modifications). The opinion is printed in Ap-

pendix "B" hereto, infra, p. A-13; the modifications are printed in Appendix "C" hereto, infra, p. A-31.

JURISDICTION

The jurisdiction of the Supreme Court is based upon 28 USC §1254(1).

QUESTION PRESENTED

Did the Court of Appeals correctly rule that the balancing factors set forth in United States v. Eight Thousand Eight Hundred Fifty Dollars ($8,850) in United States Currency, 461 U.S. 555 (1983), should be applied in petitions for remission or mitigation arising from seizure of an automobile?

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Fifth Amendment to the Constitution which provides in pertinent part:

> "No person shall . . . be deprived of life, liberty or property, without due process of law . . . ."

19 U.S.C. 1497 provides:

> "Any article not included in the declaration and entry as made, and, before examination of the baggage was begun, not metioned in writing by such person, if written declaration and entry was required, or orally if written declaration and entry was not required, shall be subject to a forfeiture and such person shall be liable to a penalty equal to the value of such article."

19 U.S.C. 1618 provides in pertinent part:

> "Whenever any person interested in any vessel, vehicle, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have

incurred, any fine or penalty thereunder, files with the Secretary of the Treasury under the customs laws or under the navigation laws, . . . a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just . . . ."

STATEMENT OF THE CASE

In 1974, Respondent purchased a 1974 Jaguar Panther automobile in Switzerland (C.A. App. 33).[1]

In the fall of 1974, Respondent decided to import the automobile into the United States and had the automobile shipped to Canada through a customs broker in Switzerland and a customs broker in Canada. Respondent intended to take a Canadian vacation with a friend and to use the automobile for the vacation, but at the time the automobile arrived, the Respondent's friend was ill and the vacation plans had to be cancelled (C.A. App. 36).

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[1] "C.A. App." refers to the excerpt of record filed with the Court of Appeals. "Tr." refers to the transcript of the trial proceedings. For ease of reference, many references with respect to the facts of this case are to the uncontested and/or admitted facts set forth in the Pretrial Conference Order, pages 31-42 of the excerpt of record filed with the Court of Appeals.

On January 20, 1975 Respondent and a Mr. Paul R. Ginther went to Vancouver, B.C. to take delivery of the automobile. They were given a customs form A8A, Customs Cargo Control by Canadian Customs and instructed to deliver the documents to the Canadian Customs Station upon leaving Canada. Respondent and Mr. Ginther proceeded towards the Canadian/ United States border and arrived at the check point at Blaine, Washington at approximately 5:00 p.m. on January 20, 1975 (C.A. App. 33).

Respondent and Mr. Ginther were confronted by a United States Immigration official, who in a span of approximately thirty seconds asked both passengers of the automobile several questions relating to citizenship, birthplace, purchase of firearms and alcohol, purchases in Canada, and one question with respect to declaration of articles for customs (C.A. App. 33, 57; Tr. 113-114).

Canadian Customs officials had alerted the United States Customs officials in Blaine that the automobile in question had been off loaded in Vancouver and may be traveling across the border into the United States (Tr. 110-111). The immigration official who had questioned the Respondent and Mr. Ginther had noted that the license plates on the automobile had matched the license plates described in the notice from Canadian Customs (Tr. 111-113).

The immigration official instructed Respondent to park the automobile and enter the building at the border. Respondent did as requested and upon entering the building was confronted by a United States customs officer who seized the automobile without giving Respondent any further opportunity to declare the automobile for customs purposes (C.A. App. 34; Tr. 42, 87, 162 and 169).

A criminal investigator interviewed Respondent that night and determined that there were no grounds for any criminal action (C.A. App.

34). At the request of the customs official, Respondent prepared a Petition for Remission or Mitigation of Forfeitures and Penalties Incurred. Respondent, through his attorneys, proceeded with the remission and mitigation, contending throughout that he was not seeking only remission or mitigation but a full refund of any and all penalties since there were no grounds for forfeiture or seizure in the first place. Within a couple of weeks, Respondent obtained release of the automobile by posting $24,500 without prejudice to any rights (C.A. App. 34, 57). In the Petition, Respondent contended that he intended to deliver the Canadian Customs form to Canadian Customs prior to entering the United States and declaring the automobile, and was in fact looking for Canadian Customs when he arrived at the United States Custom Station. Though it was found by the trial court that Respondent failed to deliver the Canadian Customs form A8A to Canadian Customs himself, the form eventually was delivered by someone to Canadian Customs on January 20, 1975 (Tr. 32-33; C.A. App. 35, 57).

The initial decision on the Petition for Remission and Mitigation was made on February 25, 1975 and was that all penalties except $3,600 be returned to Respondent. This decision was appealed and upheld by the Regional Commission of Customs in San Francisco on April 14, 1975 (C.A. App. 17). Respondent proceeded to file a complaint against Petitioner in October of 1975 (C.A. App. 2). Trial took place on October 25 and 26, 1977. The court issued its Minute Order on June 30, 1978. Final judgment was entered on September 20, 1979. Respondent filed his notice of appeal on November 16, 1979 (C.A. App. 64). The Court of Appeals affirmed the District Court's decision only with respect to the finding that Respondent violated 19 U.S.C. Section 1497 by failing to declare the automobile. The Court of Appeals reversed the

District Court's decision by holding that the Respondent's due process right to prompt consideration of his post-seizure claim of an improper seizure of his automobile, was violated.

Petitioner sought certiorari, and this Court granted the petition and vacated and remanded for reconsideration in light of United States v. Eight Thousand Eight Hundred and Fifty Dollars ($8,850) in United States Currency, 461 U.S. 555 (1983). 462 U.S. 1101 (1983).

On remand, the court of appeals 769 F. 2d 657, reaffirmed "that due process requires Customs to act promptly in ruling on petitions for remission or mitigation under 19 U.S.C. §1618." (App. p. A-7) The court of appeals remanded the trial court to determine whether petitioner had met due process allegations under the four factors noted in $8850 in light of the unique hardships involved in seizure of an automobile.

REASONS TO DENY THE WRIT

The court of appeals decision correctly complied with the directive of the Supreme Court to give "further consideration in light of United States v. Eight Thousand Eight Hundred and Fifty Dollars ($8,850) in United States Currency."

The court of appeals faithfully followed the direction upon remand from the Supreme Court. It changed its original decision that the hearing was required in twenty-four hours, and stated that the question of due process violation was to be determined on the basis of the four factors stated in $8850. Petitioner, having sought a review to bring the court of appeals into line with $8850, now seeks to reverse the court of appeals decision which expressly applies $8850 to the case at bar.

The main basis of the petition is that the due

process clause has no applicability to petitions for remission because they are matters for executive grace. Petitioner acknowledges that the Supreme Court in $8850 expressly held that due process does apply to such matters. In fact, the entire thrust of $8850 was to develop the factors for adjudication of the due process question in each case. Nevertheless, petitioner now revert to the contention that due process should not apply. The decision of the court of appeals is based upon Lee v. Thorton, 538 F.2d 27 (Second Circuit 1976) and Stypman v. City and County of San Francisco, 557 F.2d 1338 (Ninth Circuit 1977). The Supreme Court in $8850 did not overrule or question the ruling of Lee v. Thorton, which expressly held that due process applies to petitions for remission under 19 U.S.C. Section 1618.

The fact that this case involves a discretionary administrative procedure is not relevant to the question of whether or not prompt post-seizure hearing is required. The hearing is for the purpose of deciding both the propriety of the seizure in the first place, and whether or not there are circumstances justifying a return of property and some mitigation of the penalty.

The fact that the remission and mitigation proceeding is the process most suited for such a hearing in this case, does not affect the fact that the due process clause requires there to be a hearing. If the statute did not provide for a remission and mitigation proceeding, there would have to be a hearing through another means.

Petitioner tries to analogize this case to numerous cases involving prisoners' rights. Petitioner makes reference to Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1 (1979), Connecticut Board of Pardons v. Dumshat, 452 U.S. 458 (1981) and several other cases involving prison inmates. In Greenholtz prisoners' claimed they

had been unconstitutionally denied parole by the Nebraska Parole Board. This Court held that a due process protection is not created whenever a state provides the possibility of parole since this is no more than a mere hope that a benefit will be obtained. If there is an expectancy, there is some entitlement to some process under the due process clause. In Dumshat this Court held that a state felon's expectancy that a lawfully imposed sentence will be commuted was no more substantial than the hope that he would be transferred to another prison.

Petitioner tries to analogize these cases to the present case by stating that just as a prisoner has no property interest in hoping for parole or commutation of sentence, Respondent has no property interest in having forfeiture remitted or mitigated. Such reasoning ignores the fact that Respondent has a substantial property interest in his automobile and a substantial liberty interest in not being detained without his automobile. He further has an expectancy that his automobile will not be seized.

Furthermore, Respondent has committed no crime nor, as this Court stated in The One Lot Emerald Cut Stones v. United States, 409 U.S. 232, 234 (1972) did the government have to show, nor has the government in this case attempted to show, that Respondent had any intent to violate any laws of the United States. The District Court found and the Court of Appeals affirmed merely that Respondent failed to declare his car at the border. Furthermore, both the immigration officer who questioned Respondent and the customs officer who seized the automobile testified that they had no reason to believe that Respondent intended to avoid the customs laws (Tr. 123, 164).

Petitioner is comparing Respondent to a person convicted of a felony. Respondent is not in the position of one who has been tried

and found guilty after a constitutionally valid process of arrest, arraignment, trial, conviction and right to appeal. Petitioner is arguing that Respondent should be denied his trial in the first place. An extension of Petitioner's argument would eliminate the requirement that even forfeiture proceedings ever be instituted after a seizure under the Customs laws.

Petitioner states that a person who attempts to smuggle a vehicle or contraband across the border should be held to assume the risk of any inconvenience. It was not even remotely suggested by Petitioner at trial or on appeal, or by the courts below that Respondent ever attempted to smuggle a vehicle or contraband across the border.

Petitioner finally attempts to justify a delay in post-seizure hearing by submitting to this Court a declaration of Donald W. Lewis, Director of the Office of Regulations and Rulings, Office of Commercial Operations United States Customs Service. The arguments of Mr. Lewis were neither raised at the trial court nor at the first hearing before the court of appeals.

The allegations of Mr. Lewis' affidavit can be considered by the trial court on remand as evidence of one factor, "the reason for the delay." It is entirely improper for Petitioner to make a part of the record out of court statements of fact by a person whom Respondent was never given an opportunity to cross-examine.

The argument that petitions would be denied as a matter of course, with a resulting deluge of forfeiture actions, is untenable. Customs could evolve a procedure for obtaining waivers to allow the government to continue its investigation prior to denying the petition.

Petitioner urges at page 14 of its petition: "The result of the court's holding is that, unless a petition is decided almost immediately, every case will give rise to a triable issue of a due process violation." This plea is nothing

more than the "floodgates" argument, which every first year law student is taught to reject. The Court should not reject the applicability of the due process clause because it will "give rise to a triable issue" in case the government acts unreasonably.

In footnote 6, App. p. A-8, the court of appeals carefully reconciled $8850 with Stypman v. City and County of San Francisco, supra, and Lee v. Thornton, supra. Recognition of the special situation involved with government seizure of automobiles at border points was valid when it was made by Lee v. Thornton, supra, and is valid as made by the court of appeals in this case. Not every individual faced with seizure of his automobile will have the resources to post a bond for its full value and wait an indefinite period for consideration of his petition for remission. There is a sound practical basis for the special recognition of problems in automobile seizures noted by the court of appeals. The decision in $8850 did not purport to denegrate those factors. The court of appeals has set forth reasonable guidelines to give relief to persons who might suffer injuries from delay, while reserving to Petitioner the full right to explain and justify its procedures. The court of appeals properly directed the trial court to apply the factors of $8850 to the facts of the case at bar.

Petitioner has made no showing which would justify appropriation of this Court's valuable time to prolong this litigation.

CONCLUSION

In light of the foregoing it is respectfully submitted that the petition for writ of certiorari be denied.

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APPENDIX A.

Opinion of the United States Court of Appeals

Reported at 7.29 F.2d 657

This case was remanded by the United States Supreme Court for further consideration in light of United States v. Eight Thousand Eight Hundred and Fifty Dollars ($8,850) in United States Currency, _____ U.S. _____, 103 S.Ct. 2005, 76 L.Ed.2d 143 (1983) (hereinafter referred to as $8,850). The issue on remand is whether the United States Bureau of Customs (Customs) violated due process in handling an administrative petition for remission or mitigation of the forfeiture of an automobile seized at the border. In our earlier decision, we held that Customs violated John von Neumann's due process rights by failing to process von Neumann's petition for over a month after the petition was filed. See Von Neumann v. United States, 660 F.2d 1319, 1326 (9th Cir. 1981). After reconsideration in light of $8,850, we reaffirm our earlier conclusion that due process rights attach to the processing of a petition for remission. We remand to the district court, however, for determination of whether the delay violated von Neumann's due process rights.

FACTS

Our earlier decision fully explored the events surrounding the seizure of von Neumann's 1974 Jaguar Panther automobile at the United States border checkpoint of Blaine, Washington on January 20, 1974. See 660 F.2d at 1321-22. In brief, von Neumann shipped the automobile from Switzerland, where he had purchased it, to

Vancouver, Canada, where he obtained a release from Canadian authorities to transport the automobile to the United States. At the Blaine checkpoint, von Neumann failed to declare the automobile and Customs seized the vehicle pursuant to 19 U.S.C. §1497 (1976).[1]

Immediately after the car was seized, von Neumann prepared a "Petition for Remission or Mitigation of Forfeiture and Penalties Incurred" pursuant to 19 U.S.C. §1618 (1976),[2] in which

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[1] 19 U.S.C. §1497 (1976) provides:

> Any article not included in the declaration and entry as made, and, before examination of the baggage was begun, not mentioned in writing by such person, if written declaration and entry was required, or orally if written declaration and entry was not required, shall be subject to forfeiture and such person shall be liable to a penalty equal to the value of such article.

[2] 19 U.S.C. §1618 (1976) provides in part:

> Whenever any person interested in any vessel, vehicle, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury under the customs laws or under the navigation laws, before the sale of such vessel, vehicle, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, if he finds that such a fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating cir-

he stated that he had intended to deliver the Canadian release papers to Canadian Customs, but had mistakenly arrived at the United States Customs instead. On February 3, von Neumann posted a cash bond of $24,500 to secure release of the vehicle. Customs acted on the petition on February 25 and informed von Neumann that the penalty for failing to declare the car was reduced to $3,600. The Regional Commissioner of Customs subsequently upheld this determination on April 14. On remand, von Neumann argues that the delay by Customs in acting on his petition from January 20 to February 25 constituted a denial of due process.[3]

DISCUSSION

I.

Due Process Right to a Prompt Determination of the Petition

In our original decision on this appeal, we held that "due process requires the Customs Bureau to act promptly in ruling on petitions for remission or mitigation under 19 U.S.C.

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cumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or to order discontinuance of any prosecution relating thereto.

[3] The Supreme Court decision in $8,850 does not disturb our earlier decision upholding the initial seizure of the vehicle under 19 U.S.C. §1497. We therefore affirm the district court's determination that von Neumann violated section 1497 and that seizure of the vehicle was proper.

§1618." 660 F.2d at 1326. Subsequent to our decision, the United States Supreme Court rendered its decision in United States v. Eight Thousand Eight Hundred and Fifty Dollars ($8,850) in United States Currency, ____ U.S. ____, 103 S.Ct. 2005, 76 L.Ed.2d 143 (1983), which prompted this remand. We therefore reexamine our earlier holding in light of $8,850.

In $8,850, claimant Mary Vasquez failed to declare to Customs on September 10, 1975, that she was transporting monetary instruments exceeding $5,000 into the United States, a violation of section 231 of the Bank Secrecy Act of 1970, 31 U.S.C. §1101 (1976). Customs subsequently discovered $8,850 in currency in Ms. Vasquez's possession, and seized it from her pursuant to 31 U.S.C. §1102 (1976). A week later, Vasquez filed a petition for remission or mitigation. Throughout the remainder of 1975 and until May 1976, the Customs Office of Investigation conducted an investigation to determine whether the seized currency was part of a narcotics transaction. In May 1976, Customs referred the case to the United States Attorney, recommending that Vasquez be prosecuted for the reported violation. During the ensuing criminal prosecution, Customs withheld determination of the petition for remission because the currency was needed as evidence at the criminal trial. Vasquez was convicted of the ciminal violation on December 24, 1976.[4] On March 10, 1977, Customs denied the petition for remission, and referred the claim of forfeiture to the United States Attorney.

On appeal before the Supreme Court, Vasquez argued that the Government's dilatory process-

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[4] The conviction subsequently was reversed because the court files were left in the jury room during deliberations. United States v. Vasquez, 597 F.2d 192 (9th Cir. 1979).

ing of the petition and 18-month delay in filing the judicial forfeiture action violated due process. The Government countered that there was no general due process requirement of prompt post-seizure filing of a judicial forfeiture action; only a deliberate delay by the Government in order to gain an unfair tactical advantage, or a reckless disregard by the Government of the prejudical impact of delay on the defendant, could justify dismissal of the forfeiture action. The Court found, however, that due process required a prompt filing of the forfeiture petition. _____ U.S. at _____, 103 S.Ct. at 2011. The Court adopted a four-part balancing test in order to determine whether the delay between the seizure and the filing of a judicial forfeiture action under 31 U.S.C. §1102 violated the claimant's due process rights. Id.

$8,850 presented a somewhat different issue from that arising in the instant case.[5] A

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[5] The Bank Secrecy Act, at issue in $8,850, contains its own remission provision. See 31 U.S.C. §1104 (1976). Von Neumann's petition, by contrast, was filed under 19 U.S.C. §1618 (1976). Claimant Vasquez, in $8,850, argued that the Government's dilatory processing of her petition for remission and the dilatory commencement of a civil forfeiture action vilated her right of due process. _____ U.S. at _____, 103 S.Ct. at 2010. Both the Court of Appeals and the Supreme Court however, focused only on whether the delay in filing the forfeiture action violated due process. See $8,850, _____ U.S. at _____, 103 S.Ct. at 2010-11; 645 F.2d 836, 838 (9th Cir. 1981). Neither court directly addressed the issue we reach here, the due process requirement of prompt processing of the petition for remission.

Although the Court did not directly discuss

claimant may have a more compelling constitutional claim to a prompt review of the forfeiture by an independent judicial officer than he has to an administrative review of the forfeiture by Customs itself. Further, the substantive disposition of remission petitions is committed to Customs' discretion, and we will not review the merits of a claimant's petition. United States v. One 1972 Mercedes-Benz 250, 545 F.2d 1233, 1236 (9th Cir. 1976). $8,850, therefore does not necessarily impel the conclusion that due process requires a prompt determination of petition for remission or mitigation under 19 U.S.C. §1618.

Nevertheless, the Supreme Court's holding in $8,850 reinforces our earlier view that due process rights attach to the processing of the petition for remission. As we observed in our earlier decision in this case:

> [f]rom the standpoint of the claimant, the stage of the procedures at which excessive delay occurs is irrelevant. His concern, and the concern of the statutory scheme, is the quick and efficient determination of the property rights in the confiscated vehicle.

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whether a delay in the processing of a petition for remission might violate due process, it does offer some guidance on the issue. The Court stated that an important justification for delay "is to see whether the Secretary's decision on the petition for remission will obviate the need for judicial proceedings." $8,850, _____ U.S. at _____, 103 S.Ct. at 2013. It further emphasized that delay in the processing of a petition can favor both claimant and Government. Id. We understand the thrust of the Supreme Court's opinion to be that delay can benefit a claimant, rather than deprive him of due process, by avoiding costly and formal judicial proceedings. Id.

660 F.2d at 1326, quoting United States v. One 1970 Ford Pickup, 564 F.2d 864, 866 (9th Cir. 1977). We find nothing in $8,850 to disturb this conclusion. Consequently, we reaffirm our holding that due process requires Customs to act promptly in ruling on petitions for remission or mitigation under 19 U.S.C. §1618.

II.

Application of Due Process Standards to the Processing of Von Neumann's Petition

In our earlier decision, we noted that neither judicial decisions nor administrative regulations had established standards for prompt action in the administrative consideration of a petition for remission. See 660 F.2d at 1326. This absence of standards prompted the court to establish guidelines to ensure the due process rights of administrative claimants. Id. Specifically, we held that in cases involving vehicles of transportation, the district director should, whenever feasible, act on a petition for remission or mitigation within 24 hours of receipt. 600 F.2d at 1327.

Upon reconsideration in light of $8,850, however, we are persuaded that our attempt to set specific time frames for the processing of administrative petitions was ill-advised. Instead, we are guided by the Supreme Court's teaching in $8,850, that "due process is flexible and calls for such procedural protections as the particular situation demands." ____ U.S. at ____, 103 S.Ct. at 2012, quoting Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972). Due process inquiries necessarily must proceed on an ad hoc basis, and the outcome will depend on the facts of the particular case.

The analysis employed by the Supreme Court in $8,850 provides an appropriate framework for

determining whether the delay here violated von Neumann's due process rights. To determine whether government delay had abridged due process, the $8,850 Court examined four factors: the length of the delay, the reason for the delay, the defendant's assertion of his rights, and prejudice to the defendant occasioned by the delay.[6] ____ U.S. at ____, 103 S.Ct. at 2011-12. See also Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192, 33 L.Ed.2d 101 (1972). The Court noted that:

> none of these factors is a necessary or sufficient condition for finding unreasonable delay. Rather, these elements are guides

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[6] We find the due process analysis of $8,850 to be compatible with the balancing approach of Stypmann v. City & County of San Francisco, 557 F.2d 1338, 1342 (9th Cir. 1977), and Lee v. Thornton, 538 F.2d 27, 33 (2d Cir. 1976), upon which we relied in our earlier decisions. To determine whether due process had been satisfied, Stypmann and Lee balanced the interest of the government against the interest of the individual. This analysis necessarily required some consideration of the length of the delay, the reason for the delay, the claimant's assertion of his right, and the prejudicial impact of the delay upon the vehicle's owner. In our earlier decision, for example, we noted that Customs might take somewhat longer than 24 hours to process the petition if unusual circumstances so required. 660 F.2d at 1327 n. 16. Nevertheless, we expressly adopt here the due process analysis of $8,850 in order to make clear the factors that have weight in the balancing process, and to avoid any suggestion that the different terminology of Lee and Stypmann results in a fundamentally different balancing test.

> in balancing the interests of the claimant and the Government to assess whether the basic due process requirement of fairness has been satisfied in a particular case.

_____ U.S. at _____, 103 S.Ct. at 2012.

Because the outcome depends heavily on the facts, the balancing of these four factors properly should occur first in the district court. Consequently, we remand to the district court for consideration of whether the due process requirement of fairness has been satisfied here, in light of the $8,850 test.

Without any way attempting to foreclose the district court's decision, however, we feel it is appropriate to suggest several factors the court may wish to consider in reaching its determination. As $8,850 noted, the overarching factor is the length of delay, which acts to some extent as a "triggering mechanism" for due process analysis:

> [W]hen a delay becomes presumptively improper . . . necessarily depends on the facts of the particular case. . . . Obviously short delays--of perhaps a month or so--need less justification than longer delays.

$8,850 at 4590.[7] To this we would add that the propriety of the delay may turn to a great extent upon the nature of the item that has been seized. We have previously recognized the special hardships imposed on persons

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[7] The $8,850 Court found that the Government's 18 month delay in filing the petition for forfeiture did not violate due process because the delay was caused by an ongoing criminal investigation and prosecution. _____ U.S. at _____, 103 S.Ct. at 2014-15.

deprived of the use of their automobiles:

> A five-day delay in justifying detention of a private vehicle is too long. Days, even hours, of unnecessary delay may impose onerous burdens upon a person deprived of his vehicle. Lee v. Thornton, supra, 538 F.2d at 33, a case involving seizure and detention of automobiles in comparable circumstances, held that due process reparable circumstances, held that due process required action on a petition for rescission ["remission?] or mitigation within 24 hours, and, if the petition was not granted in full, a hearing on probable cause within 72 hours.

Stypmann v. City & County of San Francisco, 557 F.2d 1338, 1344 (9th Cir. 1977). The potential consequences may be particularly grave when the seizure, as here, leaves a traveler without transportation at a remote border point. See Lee v. Thornton, 538 F.2d 27, 31 (2d Cir. 1976).

Closely allied to the length of delay is the reason the Government assigns to justify the delay. $8,850, _____ U.S. at _____, 103 S.Ct. at 2012-13. The record here provides no obvious reason for the Government's one-month delay in processing von Neumann's petition, although we note that Customs processes a great number of petitions each year.[8] It ap-

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[8] The Customs Service processes over 50,000 noncontraband forfeitures per year. In 90% of all seizures, the claimant files an administrative petition for remission or mitigation. The Secretary grants at least partial relief for an estimated 75% of the petitions. $8,850, _____ U.S. at _____, 103 S.Ct. at 2009.

The Supreme Court in $8,850 recognized that

pears that, at the time of the seizure, Customs may have had all of the facts at hand necessary for an expeditious determination of the petition. Von Neumann had admitted both the origin of the vehicle and his failure to declare the automobile. There is no suggestion that von Neumann or the vehicle might have been involved in illegal activity other than the reporting violation and that Customs delayed processing the petition to allow an investigation as in $8,850.[9]

It is also undisputed that von Neumann filed his petition for remission at the time his vehicle was seized, which seems a sufficient assertion of his rights.

The final factor in the analysis is the prejudice to the individual caused by the delay. In addition to possible loss of essential witnesses or evidence, a claimant may also be prejudiced by unanticipated, unrecoverable, expenses resulting from a seizure of his vehicle, sudden disruption of travel plans, inconvenience, or even peril, he thereby experiences. See, e.g., Stypmann, 557 F.2d at 1342-43; Lee, 538 F.2d at 33.

After weighing these and such other factors the district court considers relevant, the court

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delays of a month or so require less explanation than more lengthy delays. That Court, however, did not imply that no explanation at all is required. Id. at _____, 103 S.Ct. at 2012-13.

[9] The investigation in $8,850 required responses from state, federal and Canadian law enforcement officials. The Supreme Court found no evidence that the Government had not pursued its investigations diligently in $8,850, or that delays in the ciminal prosecution were caused by the Government. $8,850 at _____, 103 S.Ct. at 2012-13.

should determine whether the delay violated due process and enter an appropriate judgment.

CONCLUSION

The district court's finding that von Neumann violated 19 U.S.C. §1497 by failing to declare his car is not clearly erroneous; therefore the seizure of his car was proper. We remand, however, for determination of whether the delay in processing von Neumann's petition for remission or mitigation violated his due process right to prompt consideration of his claim, in light of the $8,850 balancing test.

AFFIRMED in part and REMANDED in part.

APPENDIX B

Opinion of the United States Court of Appeals

Reported at 660 F.2d 1319

This appeal presents the issue of whether the procedures followed by the United States Bureau of Customs (Customs) in processing an administrative petition for remission or mitigation of the forfeiture of an automobile seized at the border for failure of the owner to make the required declaration, were consistent with due process. John von Neumann's foreign-bought car was seized by Customs officials at the Canadian-United States border after he failed to declare the car upon entering the United States. On the day of the seizure, von Neumann filed an administrative claim for remission or mitigation, and later recovered the car after posting a bond as security. Over a month after the petition was filed, Customs remitted $20,900 to von Neumann, but retained $3,600 as a penalty.

Von Neuman filed a complaint in district court, challenging the penalty and the procedures used to assess it. The district court found that von Neumann violated 19 U.S.C. §1497 by failing to declare the car and thus the seizure was proper. Additionally, the court found that the remission procedure was proper. We agree that seizure was proper under section 1497, but find fatal due process violations in the remission procedure.

FACTS

In 1974, von Neumann purchased a 1974 Jaguar Panthar automobile in Switzerland and shipped it to Vancouver, Canada. Prior to shipment, von Neumann registered the car in

California and obtained California license plates. On January 20, 1975, von Neumann picked up the car in Vancouver and obtained a release from Canadian Customs to take possession. Canadian Customs officials gave von Neumann form A8A, which authorized transportation of the car to the border, and instructed him to deliver the form to the Canadian Customs border station before leaving the country.

Von Neumann and a friend arrived at the United States border checkpoint at Blaine, Washington at 5:00 p.m. on January 20. The Blaine checkpoint is across the highway and slightly south of the Canadian border station. The highway approaching the Blaine Station is a multilane highway with several turnoffs for the Canadian Customs building. Von Neumann testified that he inadvertently passed the Canadian station because of poor visibility and inadequate directions. For whatever reasons, von Neumann arrived at the Blaine checkpoint without having delivered form A8A to Canadian Customs.

At the Blaine checkpoint, von Neumann and his passenger were briefly questioned by United States Immigration Officer Perkins.[1] Canadian Customs officials had earlier alerted United States Customs that von Neumann's car would be crossing the border, and Perkins matched the description to the car before questioning the occupants. Perkins asked questions relating to citizenship, and specifically asked von

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[1] Harley Perkins was an Inspector for the Immigration and Naturalization Service, but had been serving as a designated Customs Officer since August 16, 1974. See 19 U.S.C. §1401(i). His designation form indicates that he was to receive training necessary to serve as a Customs Inspector for arriving vehicles, aircraft, and vessels.

Neumann whether he had anything to declare. When von Neumann failed to declare the automobile, Perkins asked him into the checkpoint station and referred the case to Customs Inspector Morrison. Upon being asked why he had not declared the car, von Neumann explained that he did not think he was required to declare it. Morrison then seized the vehicle pursuant to 19 U.S.C. §1497.[2]

Immediately after the car was seized, von Neumann prepared a "Petition for Remission or Mitigation of Forfeiture and Penalties Incurred," see 19 U.S.C. §1618,[3] explaining that he had intended to deliver the Canadian Customs papers to Canadian Customs but had mistakenly arrived at United States Customs instead. After filing the petition, von Neumann arranged for other transportation into the United States, and left his car with Customs.

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[2] 19 U.S.C. §1497 provides:

> Any article not included in the declaration and entry as made, and, before examination of the baggage was begun, not mentioned in writing by such person, if written declaration and entry was required, or orally if written declaration and entry was not required, shall be subject to forfeiture and such person shall be liable to a penalty equal to the value of such article.

[3] 19 U.S.C. §1618 provides in part:

> Whenever any person interested in any vessel, vehicle, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury under the customs laws or under the navigation laws, before the

On February 3, 1975, von Neumann posted a bond for $24,500, the value of his car,[4] and Customs returned the vehicle. On February 25, 1975, the Seattle Director of the Bureau of Customs[5] informed von Neumann that the penalt for failing to declare the car was being reduced to $3,600, and therefore $20,900 would be refunded. Von Neumann requested administrative review of this determination, and on April 14, 1975, the Regional Commissioner of Customs in San Francisco upheld the $3,600 penalty assessment.

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sale of such vessel, vehicle, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto.

[4] Customs officials have the discretion to release a seized vehicle if the person claiming an interest has a "substantial interest therein." 19 U.S.C. §1614. In this case Customs required a bond for whit it considered the value of the car, as security to cover the penalty assessed. See 19 C.F.R. §§162.41(a), 162.43, 162.44(b) (1980).

[5] By statute, the Secretary of the Treasury acts on petitions for remission or mitigation. 19 U.S.C. §1618. This authority has been dele-

Having exhasuted his administrative remedies, von Neumann filed a complaint in district court on October 14, 1975, seeking: (a) return of the $3,600; (b) injunctive relief to prevent Customs from placing his name on a computer list of violators; (c) a declaration that the seizure and penalty were unlawful.[6] The district court found that von Neumann violated 19 U.S.C. §1497, and therefore seizure of the car was proper. The court also found that the remission and mitigation procedures were proper, and entered judgment for the government. Von Neumann appeals, challenging the imposition of the penalty as well as the procedures followed by Customs.

DISCUSSION

I.
Violation of 19 U.S.C. §1497

Von Neumann contends that the district court erred in finding that he violated section 1497,

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gated to district directors in cases where the total value of the merchandise forfeited does not exceed $25,000. 19 C.F.R. §171.21 (1980). The estimated value of von Neumann's car, $24,500, thus fell within the district director's regulatory authority.

[6] Customs filed a counterclaim requesting recovery of the full $24,500 in accordance with 19 U.S.C. §1497. This claim was apparently based on the argument that since Customs has complete discretion over a petition for remission, von Neumann's challenge reopened the determination and Customs could now assess the full penalty value for the failure to declare. See United States v. One 1972 Mercedes-Benz 250, 545 F.2d 1233, 1236 (9th Cir. 1976). The

because he was never given adequate opportunity to declare the car. The district court's determination that von Neumann was given an adequate opportunity to declare and yet failed to declare his car is a factual one, which we will not overturn unless clearly erroneous. United States v. Wagner, 434 F.2d 627, 628-29 (9th Cir. 1970). See Vesey v. United States, 626 F.2d 627, 629 (9th Cir. 1980). The record fully supports the district court's conclusion that von Neumann attempted to introduce his car into United States commerce without declaring it, despite an opportunity to do so.

Officer Perkins testified that he asked von Neumann if he had purchased or acquired anything outside of the United States that he was bringing back into the country,[7] and then asked if he had anything to declare. Von Neumann thus had two opportunities to declare the car, yet failed to do so.[8] It is irrelevant whether von Neumann was looking for the Canadian Customs building and did not intend to enter the United States without declaring the car. As the Supreme Court has held,

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district court denied Custom's counterclaim, and Customs has not appealed that aspect of the judgment.

[7] Von Neumann claims that Perkins asked whether he had purchased anything in Canada, and he responded negatively because the car was purchased in Switzerland. Perkins testified that his questioning was not limited to purchases in Canada, but included acquisitions anywhere outside the United States. The district court apparently credited Perkins' testimony.

[8] We note also that von Neumann was an experienced importer who had been shipping automobiles between Europe and the United States for over

> "[t]o succeed in a forfeiture action under §1497 . . . the Government need only prove that the property was brought into the United States without the required declaration; the Government bears no burden with respect to intent."

One Lot Emerald Cut Stones v. United States, 409 U.S. 232, 234, 93 S.Ct. 489, 491, 34 L.Ed.2d 438 (1972). In demonstrating that von Neumann failed to declare the car, Customs has shown that the car was subject to forfeiture and that its owner is "liable to a penalty equal to the value of such article [the undeclared car]." 19 U.S.C. §1497.

Von Neumann argues that because Customs regulations required a written declaration for articles exceeding $25 in value, his oral statement failing to declare the car did not constitute a violation of section 1497. 19 C.F.R. §148.-12(b)(2) (1980). This argument is without merit. Perkins was not under any obligation to request a written decLaration until von Neumann had orally declared the car, nor did von Neumann ever attempt to submit a written declaration.

Von Neumann's final argument is that he was entitled to amend his declaration up until the time his baggage was searched. Although an amendment is proper under Customs regulations, the undeclared item must be "brought to the attention of the examining officer by the passenger." 19 C.F.R. §148.16(a) (1980). Von Neumann failed to do this. Moreover, Customs was not required to search his baggage. The statute states that customs officers

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twenty years, and had personally crossed international borders "innumerable times." In spite of this background, von Neumann failed to mention the car after a specific Customs request.

"may cause an examination to be made of the baggage . . . ." 19 U.S.C. §1496 (emphasis added). Section 1496 does not provide protection from seizure up until the time a formal baggage search is conducted. The "search" took place when Officer Perkins observed the car and matched it to the description provided by Canadian Customs.

The district court's finding that von Neumann failed to declare his car, after an adequate opportunity to do so, is not clearly erroneous. We therefore affirm the district court determinations that von Neumann violated section 1497 and that seizure of the vehicle was proper.[9]

II.

Due Process Challenge to the Administrative Procedure under 19 U.S.C. §1618

A. Petition for Remission or Mitigation

Under 19 U.S.C. §1618, a person whose property is seized and subject to forfeiture may file an administrative petition for remission or mitigation of the penalty. See note 3, supra. In cases where the forfeiture value does not exceed $25,000, the district director may remit or mitigate the penalty "under the law and in view of the circumstances, [as] he shall deem appropriate . . . ." 19 C.F.R. §171.21 (1980). The administrative remission process is independent of a judicial action for forfeiture, which must be initiated promptly. 19 U.S.C. §§1602-04; Seguin v. Eide, 645 F.2d 804, 808

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[9] Because we affirm this portion of the district court judgment, von Neumann is not entitled to have his name removed from Customs' computer list of persons who have failed to declare merchandise, as requested in his prayer for injunctive relief.

(9th Cir. 1981); United States v. One 1970 Ford Pickup, 564 F.2d 864, 866 (9th Cir. 1977). In this case, judicial forfeiture proceedings were never initiated; we are only concerned with the propriety of the administrative procedures followed by Customs.

The substantive disposition of remission petitions is committed to the Customs Bureau's discretion, and we will not review its decision on the merits of a claimant's petition. United States v. One 1972 Mercedes-Benz 250, 545 F.2d 1233, 1236 (9th Cir. 1976). In this case, however, von Neumann is challenging the procedures utilized to reach the substantive decision. Specifically, he claims that the delay of over a month in acting on his petition was a denial of his fifth amendment right to due process.[10]

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[10] Because border seizure is an "extraordinary situation" requiring immediate action, the ordinary due process requirements of notice and hearing prior to deprivation of property are not required. Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 678-80, 94 S.Ct. 2080, 2090, 40 L.Ed.2d 452 (1974); Ivers v. United States, 581 F.2d 1362, 1367-68 (9th Cir. 1978). Customs argues that this was the only issue before the district court, and therefore von Neumann is precluded from arguing that a prompt post-seizure hearing is required.

The pre-trial conference order indicates that one of the issues of law to be considered was:

> "Is the procedure which was instituted against Plaintiff and the Automobile, whereby the Automobile may be forfeited and seized, and then remission and mitigation proceedings begun, an unconstitutional violation of the due process clause of the Fifth Amendment to the United States Consti-

B. Due Process Right to a Prompt Determination

The cases interpreting 19 U.S.C. §§1602-04, requiring prompt initiation of judicial forfeiture proceedings, make it clear that due process depends on the circumstances of each individual case. See e.g. Seguin v. Eide, 645 F.2d 804, 808-09 (9th Cir. 1981) (delay of almost 5 months excessive); United States v. One 1970 Ford Pickup, 564 F.2d 864, 866 (9th Cir. 1977) (delay of 11 months excessive); United States v. One 1973 Buick Riviera Automobile, 560 F.2d 897, 901 (8th Cir. 1977) (delay of 5 months justified). The rule in this circuit is that filing of a petition for remission under section 1618 does not excuse Customs from its burden of prompt referral for judicial forfeiture. Ivers v. United States, 581 F.2d 1362, 1372 (9th Cir. 1978).

By contrast, there has been little interpretation of the due process requirements for the remission procedure itself, when judicial proceedings have not been initiated.[11] This is perhaps in part because the statutory language

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tution." The issue is framed in sufficiently general terms to include both pre- and post-seizure due process requirements. Moreover, the case of Lee v. Thornton, 538 F.2d 27 (2d Cir. 1976), which found post-seizure administrative delay to be a due process violation, was cited and discussed below. We therefore conclude that the propriety of the post-seizure administrative delay is properly before this court.

[11] A panel of this court recently held that the owner of a vehicle seized for a drug violation under 21 U.S.C. §881(a) did not have a due process right to aprobable cause hearing within

authorizing remission does not place any time restrictions on Customs, while the judicial referral statutes use the terms "immediately," "promptly," and "forthwith". Compare 19 U.S.C. §1618 and 19 C.F.R. §§171.11-171.33 (1980) with 19 U.S.C. §§1602-04. The absence of stautory language does not eliminate the constitutional requirement of due process, however. The informal, remedial nature of the administrative petition makes rapid processing essential.

The purposes of the section 1618 remission process have been described as follows:

> [F]irst, to permit an administrative review of the propriety of the seizure and the equities involved before any formal court action begins, and second, to give a claimant to seized property a quick, expeditious method of getting his property back without the necessity of hiring a lawyer to defend a court proceeding.

United States v. Eight (8) Rhodesian Stone Statutes, 449 F. Supp. 193, 202 (C.D. Cal. 1978). The need for prompt action is particularly acute where the seized property is an automobile, because "both the necessities and amenities of life may depend upon the availabilities of an automobile when needed." Stypmann v. City and County of San Francisco, 557 F.2d

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72 hours of seizure. United States v. One 1971 BMW 4-Door Sedan, 652 F.2d 817, at 819-820 (9th Cir. 1981). The panel found that the strong government interest in enforcing narcotics laws outweighed the individual interest at stake. The One 1971 BMW panel was not faced with a challenge to the promptness of remission procedures, since a petition for remission was never filed. See at 821-822.

1338, 1343 (9th Cir. 1977). See United States v. One 1971 Opel G.T., 360 F. Supp. 638, 641 (C.D. Cal. 1973) (automobile is a rapidly depreciating asset). In this case von Neumann was not only deprived of an asset, he was left without transportation at the border, a potentially serious consequence for many travelers. See Lee v. Thornton, 538 F.2d 27, 31 (2d Cir. 1976).

Lee is the only case directly addressing the due process argument advanced by von Neumann. Lee was accused of using his van to bring undeclared persons, merchandise, and marijuana into the country. The van and merchandise were seized, and Lee was assessed a penalty equal to the value of the van. He was informed that the van and merchandise were subject to forfeiture and that he could file a petition for remission or mitigation under section 1618. Lee filed a petition within a few days of seizure and recovered the van after paying $100, the amount of the reduced penalty.[12]

The Lee court reversed the penalty assessment because Customs failed to provide Lee with a prompt hearing on his remission petition. The court first balanced the serious nature of the individual property deprivation against the inconvenience to government in providing a prompt determination of the legality of the detention. 538 F.2d at 33. An important factor in the individual's interest is the hardship that

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[12] Lee was a consolidated appeal, and the factual circumstances of appellant Rich's cases were similar to Lee's. Although seizure in Lee was pursuant to 19 U.S.C. §§1460, 1594, and 1595a, and in the instant case was pursuant to 19 U.S.C. §1497, Lee was an interpretation of the remission statute at issue here: 19 U.S.C. §1618. 538 F.2d at 31.

even a temporary deprivation of an automobile might cause. See Stypmann, 577 F.2d at 1343; One 1971 Opel G.T., 360 F. Supp. at 641. On the other hand, once a seizure is accomplished, the government's justifications for delaying a hearing are not compelling. Wiren v. Eide, 542 F.2d 757, 761 n.6 (9th Cir. 1976). After balancing the competing interests, the Lee court held:

> [W]hen vehicles are seized for forfeiture or as security, action on petitions for mitigation or remission should be required within 24 hours, with notice of the charge, and with opportunity to file a written response and to make an oral appearance and that, if requested, some kind of hearing on probable cause for the detention before an officer other than the one making the charge should be provided within 72 hours if the petition is not granted in full.

538 F.2d at 33.

Although not bound by the Second Circuit's holding in Lee, we find its reasoning persuasive. This court expressly relied on the Lee rationale to invalidate a California towing and possessory lien statute[13] in Stypman v. City & County of San Francisco, 557 F.2d 1338 (9th Cir. 1977). The statute in Stypmann granted towing companies, who had possession of a car because of a traffic violation, a possessory lien on the vehicle to insure recovery of towing and storage fees. The court held that this statute could not withstand a due process attack because it did not provide for a prompt post-seizure hearing to determine probable cause for the seizure. The Stypmann court stated:

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[13] Cal. Veh. Code §22851.

> A five-day delay in justifying detention of a private vehicle is too long. Days, even hours, of unnecessary delay may impose onerous burdens upon a person deprived of his vehicle. Lee v. Thornton, supra, 538 F.2d at 33, a case involving seizure and detention of automobiles in compa circumstances, held that due pro quired action on a petition for re [remission?] or mitigation within and, if the petition was not gran a hearing on probable cause with hours.

Id. at 1344 (footnote omitted).[14] Lee was also cited for the propositions that a car is an important individual asset, id. at 1342 n.8 & 1344 n.22, and that a court must balance governmental and individual interests to determine due process, id. at 1342.

The government contends that Ivers v. United States, 581 F.2d 1362 (9th Cir. 1978), stands for the proposition that the due process requirements of prompt notice and hearing only apply to judicial forfeiture proceedings, not administrative proceedings under 19 U.S.C. §1618. The issue in Ivers, however, was whether the filing of an administrative petition operated as a waiver of a claimant's right to a prompt forfeiture action. The court held that it did not. Id. at 1370. In dicta, the Ivers court stated:

> Administrative consideration of a claimant's petition for remission is not governed by any statutory or regulatory requirement of

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[14] Stypmann held that five days was too long of a delay, but did not establish what time period would be proper 557 F.2d at 1344-45.

promptitutde. Nor does it not afford a claimant the full panoply of due process rights inherent in a judicial proceeding. Remission being a matter of legislative grace, the exercise of the Secretary's discretion is not reviewable by the courts. Id. at 1371. The tone of this statement indicates that the word "not" in the second sentence may be a misprint. It seems that the court was merely emphasizing the informal nature of the administrative process. We agree that an administrative hearing does not require all the protections of a judicial hearing, but we believe a claimant is entitled to prompt disposition of an administrative claim.

The balance of the Ivers opinion suggests that due process does require a prompt resolution of administrative claims. The court noted that administrative proceedings are informal and inexpensive, and will often obviate the need for judicial action since remission petitions are frequently granted. Id. at 1370. If time limits are not imposed on the administrative process, the government might be forced to bring a judicial action prior to the completion of the administrative claim. Once a case is referred for judicial action, the administrative proceedings on a petition for remission must cease. 19 C.F.R. §171.2(a) (1980). Therefore delay in ruling on a claimant's petition could force a more cumbersone and timeconsuming judicial forfeiture action. See Ivers, 581 F.2d at 1370, United States v. Eight (8) Rhodesian Stone Statutes, 449 F. Supp. 193, 202 (C.D. Cal. 1978). The rationale of the Lee case is further supported by cases from this circuit. In United States v. One 1970 Ford Pickup, 564 F.2d 864 (9th Cir. 1977), we stated: "[f]rom the standpoint of the claimant, the stage of the procedures at which excessive delay occurs is irrelevant. His concern, and the concern of the statutory scheme, is the quick and efficient

determination of the property rights in the confiscated vehicle." Id. at 866 (referring to various stages of the judicial forfeiture procedure). The United States District Court for the Central District of California, citing Lee, noted that "[a] growing number of decisions enunciate the proposition that both the adjudication of the administrative claim and the filing of a court action when required, must be speedily done." Eight (8) Rhodesian Stone Statues, 449 F. Supp. at 200 (emphasis added). See also Pollgreen v. Morris, 496 F. Supp. 1042, 1051-53 (S.D. Fla. 1980) (invalidating seizure of vessels used in Cuban "Freedom Flotilla" for failure to provide prompt post-seizure hearings; relying on Lee and Stypmann); F/V American Eagle v. State, 620 P.8d 657, 666-67 (Alaska 1980) (citing Lee and Stypmann for the proposition that a post-seizure hearing must be prompt even when the government interest is "urgent"). We therefore adopt the Lee rationale and hold that due process requires the Customs Bureau to act promptly in ruling on petitions for remission or mitigation under 19 U.S.C. §1618. The one month delay in processing von Neumann's petition does not conform to this standard.

C. What constitutes a Prompt Determination

We have concluded that Customs must act on a remission petition promptly and that the one month delay in processing von Neumann's petition was unreasonable. This court has not yet formulated specific standards, but we are guided by the Stypmann court which held that a five-day delay in providing a hearing violated due process. Stypmann v. City and County of San Francisco, 557 F.2d 1338, 1344 (9th Cir. 1977). Although Customs regulations provide specific requirements for remission petitions, including a 60 day limitation on filing a peti-

tion, the regulations do not place any time constraints on administrative consideration of a petition. 10 C.F.R. §171.12(b) (1980); See generally 19 C.F.R. §§171.11-171.33 (1980).

In the absence of any appropriate regulatory provisions, we find that the imposition of guidelines is necessary to ensure the due process rights of administrative claimants. No showing has been made that the time limits set by the Second Circuit in Lee have proved unreasonably burdensome. We hold that in cases involving vehicles of transportation within a district director's authority under 19 C.F.R. §171.21 (1980),[15] the director must ordinarily, depending upon the nature of the article seized,[16] act on a petition for remission or mitigation within 24 hours of receipt. The claimant must be allowed the opportunity to make an oral appearance to argue his or her claim. Because the

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[15] The district director has authority to act in cases involving a total value of merchandise not exceeding $25,000. See note 5 supra. The due process requirements for cases involving greater value than $25,000, which are decided by the Commissioner of Customs, are not before us. See 19 C.F.R. §171.11(a) (1980). We note that the greater the value of the merchandise, the greater the potential for a burden on individual rights. On the other hand, the administrative machinery may need more time to operate when the district director is not authorized to act.

[16] Unlike the court in Lee, we have set forth times to be followed under ordinary circumstances. We do not preclude the possibility of some reasonable extension being permissible if unusual circumstances, such as holidays or unavailability of needed personnel, require some brief delay. A claimant might also waive delays in the administrative process.

administrative delay in processing von Neumann's petition violated his due process rights, we reverse and remand with instructions to enter judgment for von Neumann in the amount of $3,600 plus costs. See Lee, 538 F.2d at 33.

CONCLUSION

The district court finding that von Neuman violated 19 U.S.C. §1497 by failing to declare his car is not clearly erroneous, therefore the seizure of his car was proper. The delay in processing von Neumann's petition for remission or mitigation, however, violated his due process right to prompt consideration of his claim. Because we hold that Customs must ordinarily act on a petition for remission within 24 hours of receipt, we reverse and remand with instructions to enter judgment for the plaintiff.

AFFIRMED in part, REVERSED AND REMANDED in part.

APPENDIX C

Order Modifying First Opinion of the Court of Appeals

The Opinion in the above-entitled case is modified as follows:

(1) At page 5512 of the slip opinion, second paragraph, left column, the third sentence is amended to read:

> We hold that in cases involving vehicles of transportation within the director's authority under 19 C.F.R. §171.21 (1980),[15] the director should whenever feasible[16] act on a petition for remission or mitigation within 24 hours of receipt.

(2) Footnote 16 is amended to read as follows:

> [16] Unlike the court in Lee, we have set forth times to be followed under ordinary circumstances. We do not preclude the possibility of some reasonable extension being permissible if unusual circumstances, such as holidays or unavailability of essential information or of needed personnel, require some brief delay. A claimant might also waive delays in the administrative process. We further do not foreclose the promulgation of a regulation setting forth any appropriate standard in accordance with the principles set forth in this opinion.

The panel as contituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc. The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the sugges-

tion. Fed. R.App.P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.